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IN THE

Supreme Court of the United States

LARRY G. MASSANARI,
ACTING COMMISSIONER OF SOCIAL SECURITY,
Petitioner,

v.

SIGMON COAL COMPANY, INC. ET AL.,
Respondents.

On Writ of Certiorari
To the United States Court of Appeals
For the Fourth Circuit

BRIEF *AMICUS CURIAE* OF BELLAIRE CORPORATION, IN SUPPORT OF RESPONDENTS

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QUESTIONS PRESENTED

1. Whether the Combined Fund provisions of the Coal Act should be construed to impose retroactive liability upon successors in interest to signatory operators, even though the statute's unambiguous language does not so provide.

2. Whether statutory language that is entirely unambiguous, both on its face and when viewed in context with other portions of the same statute, and which if applied as written it would withstand a constitutional challenge under rational basis scrutiny, may be interpreted and applied in a manner contrary to its meaning.

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STATEMENT OF INTEREST[1]

Bellaire Corporation formerly mined coal under National Bituminous Coal Wage Agreements ("NBCWAs") signed with the United Mine Workers of America ("UMWA") and has been charged with liability for retiree health benefits under the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701-9722 ("Coal Act"). Bellaire last signed an NBCWA in 1984 and stopped mining bituminous coal at about the same time. Based upon its own mining operations, Bellaire has been assigned responsibility under the Coal Act's United Mine Workers of America Combined Benefit Fund ("Combined Fund") for retiree health benefits for several hundred retired miners (and their dependents) whom it actually employed for some period of time.

In addition to Combined Fund liabilities arising from Bellaire's own coal mining operations, the Commissioner of the Social Security Administration assigned to Bellaire responsibility for a total of eighty-nine beneficiaries, consisting of retirees and their dependents, of two coal mining companies whose assets were acquired by Bellaire decades before Congress passed the Coal Act. All of the assigned retirees left their employment with the sellers before Bellaire purchased those companies' assets; none ever worked for Bellaire. Bellaire acquired the assets of Cambria Mining Company ("Cambria") in 1954 and acquired the assets of Independent Coal & Coke Company ("ICC") in 1968. Cambria was a signatory to the 1954 and earlier NBCWAs. ICC was a signatory to the 1966 and earlier NBCWAs.

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[1] Counsel for all parties have consented to the filing of this *amicus* brief, and *amicus* have filed those consents with the Clerk of Court. Sup. Ct. R. 37.3. No counsel for a party in this case authored this brief in whole or in part, and no person or entity, other than *amicus* or its counsel, made a monetary contribution to this brief's preparation or submission. Sup. Ct. R. 37.6.

Neither Cambria nor ICC continued to operate under its own name or signed another NBCWA after its assets were sold. If either company existed today, its signatory operator liability to the Combined Fund would be unconstitutional under *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998).

The Commissioner recognizes that either Cambria or ICC was the actual "signatory operator" and "last signatory operator" as defined in sections 9701(c)(1) and 9701(c)(4) of the Coal Act with respect to each retiree and dependent at issue. According to the Commissioner, Cambria or ICC also would have been the "assigned operator" under section 9701(c)(5) of the Coal Act for purposes of Combined Fund premiums with respect to each retiree (and his or her dependents) if Cambria or ICC had remained in business on July 20, 1992. But neither Cambria, ICC, nor any "related person" to either of them, as defined by the statute, remained in business on that date. Instead of relying on the Act's provisions for the assignment of the miners, the Commissioner concluded that Bellaire, as the successor in interest to a signatory operator, was a "related person" despite the fact that it did not meet the statutory definition of a "related person." § 9701(c)(2)(A). "Related persons" are jointly and severally liable, along with the last signatory operator. §§ 9704(a), 9706(a).

Accordingly, Bellaire has a direct interest in the outcome of this case. Its liability to pay premiums to the Combined Fund to finance lifetime health care benefits for eighty-nine miners and their dependents turns upon whether Congress in fact imposed liability to the Combined Fund retroactively upon pre-Coal Act successors in interest of signatory operators.[2]

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[2] In fact, Bellaire was litigating this very issue in the United States District Court for the Southern District of Ohio when certiorari was granted in *Sigmon*, whereupon the district court stayed and administratively closed the case, subject to reopening after this Court decides *Sigmon*. *Bellaire Corp., et al. v. Apfel, et al.*, No. C-2-99-532 (S.D. Ohio Apr. 25, 2001).

More generally, as a corporate citizen that does its best to adhere to the law as it understands it, and which experiences substantial inefficiencies and unexpected costs when statutory requirements with which it must comply are either uncertain or are ultimately given an interpretation contrary to their unambiguous meaning, Bellaire has a direct interest in the interpretation of statutes in a manner that is consistent with the words used.

ARGUMENT

This case presents the question whether the plain language of section 9701(c)(2) of the Coal Act should be applied as written.[3] Under this Court's decisions, the resulting pattern of liabilities based on an unambiguous literal reading cannot be disturbed by a court unless it is so absurd or inconsistent with Congress's demonstrable intentions that one can say with assurance that a different meaning was intended.

The Fourth Circuit in this case, over a dissent, noted that the statutory definition of "related persons" in section 9701(c)(2)(A) itemizes three categories of entities defined by particular relationships to a signatory operator, and goes on to include "successor[s] in interest" to the entities thus defined. Pet. App. 24a. Because this language clearly does not extend to successors in interest of signatory operators themselves, and because the court found that the literal language was not "contrary to clearly expressed congressional intent," it upheld the district court's ruling against the Commissioner. Pet. App. 28a.

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[3] There is no issue in this case about whether any retired miners or their dependents will receive health care benefits. The Act assures coverage for those individuals whether or not the Commissioner assigns to entities such as Respondents or *amicus* Bellaire liability to the Combined Fund.

In *R.G. Johnson Co. v. Apfel*, 172 F.3d 890 (D.C. Cir. 1999), the District of Columbia Circuit Court of Appeals, by a 2-1 vote, reached the opposite conclusion. While conceding that the literal language of the statute excludes successors in interest to signatory operators from the definition of related persons, the court concluded "that because such an interpretation would frustrate the clear intent of Congress . . . 'related person' must be construed to include a successor in interest to a signatory operator." *Id.* at 891-92. It reached this conclusion in light of Congress's stated intention, in a note to the Act's first section, to impose financial responsibility on "persons most responsible for plan liabilities," and the court's inability to think of any "reason why Congress would have intended to impose liability" on a successor in interest to a related person, but not on a successor in interest to the signatory operator. *Id.* at 895.

The Third Circuit Court of Appeals followed the reasoning of *R.G. Johnson* and held that the literal application of section 9701(c) of the Coal Act produced "'a result [that was] demonstrably at odds with the intentions of the drafters.'" *Aloe Energy v. Apfel*, No. 99-3915, slip op. at 8 (3d Cir. 2000) (quoting *R.G. Johnson*, F.3d 890 (D.C. Cir. 1999).

I. The Statutory Language At Issue Is Entirely Unambiguous In Imposing No Retroactive Liability On Pre-Act Successors In Interest Of Signatory Operators

All of the judges who have labored on these cases, including those judges who ultimately declined to follow the literal language, agree that the words of the statute are unambiguous in extending the status of "related person" to successors in interest of anyone otherwise fitting the description of "related person," and in not extending that status to successors in interest of parties defined as "signatory

operators."[4] A fuller consideration of the Coal Act's relevant provisions confirms this judgment, as well as the further conclusion that the statute affords no other basis on which to impose retroactive liability on pre-Act successors in interest of signatory operators.

The Coal Act addresses separate obligations for retiree health care benefits arising in connection with two separate funds—the Combined Fund, 26 U.S.C. §§ 9701-9708, and the 1992 UMWA Benefit Fund, 26 U.S.C. § 9712—as well as in connection with Individual Employer Plans, 26 U.S.C. § 9711. Only the provisions concerning the Combined Fund are at issue in this case.[5]

Those provisions place primary liability on a signatory operator, who becomes the "assigned operator" under section 9704(a), for whom the retiree worked in the past. 26 U.S.C. § 9706(a). The Act also provides that where a person becomes

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[4] *See* Pet. App. 26a (text is "clear and unambiguous"); Pet. App. 39a ("literal reading . . . unambiguously excludes successors in interest to signatory operators") (Murnaghan, J., dissenting); *R.G. Johnson*, 172 F.3d at 891 ("we cannot fault the district court's literal reading of the definition"); *id.* at 896 (the definition "excludes successors in interest to signatory operators") (Randolph, J., dissenting); *Aloe Energy, slip op.* at 7-8 (relying entirely on *R.G. Johnson*, and quoting its conclusion that the "literal application of [the] statute will produce a result demonstrably at odds with the intentions of the drafters.")

[5] The Combined Fund, established by the 1992 Coal Act, covers miners who retired prior to July 20, 1992. 26 U.S.C. § 9703(f). Retired miners whose benefits are provided by Individual Employer Plans, which were required to be created under 1978 and later wage agreements, are covered by section 9711. The 1992 Benefit Plan is established by section 9712 and covers those miners who retired between July 20, 1992 and September 30, 1994.

a successor of an assigned operator after enactment of the Act, the assigned operator may—*but need not*—transfer liability for Combined Fund beneficiaries to that successor. § 9706(b)(2). When that occurs, the assigned operator remains liable as a guarantor of the benefits. *Id.* The statute contains no provisions of any sort addressing the liability to the Combined Fund of entities which became successors in interest to signatory operators before the enactment of the Act. As a result, the statute unmistakably provides that prospective liability of successors to signatory operators—that is, resulting from transfers occurring after enactment of the Act—is optional, and may result from a voluntary agreement of the parties to the transaction. At the same time, the Act fails to impose any retroactive liability upon successors or successors in interest to such operators based on pre-Act transfers.

The provisions further state that any related person of an assigned operator shall be jointly and severally liable for any premium owed by the operator. § 9704(a). Related persons, in turn, are explicitly defined to include three categories of entities related to a signatory operator in specified ways, including where they are under common or shared control. § 9701(c)(2)(A)(i-iii). The Act also provides that successors in interest of related persons so defined shall themselves be related persons.[6] *Id.* The status of related persons based on

[6] Bellaire notes that the Commissioner made each of the assignments of Cambria and ICC retirees to Bellaire on the basis that it is a "successor" to those entities, not a "successor in interest." The Commissioner apparently ignored the fact that Congress employed the two terms in different provisions of the Coal Act in such a way that they clearly have separate and distinct meanings. *See Holland v. New Era Coal Co.*, 179 F.3d 397, 402 (6th Cir. 1999). The court in *Holland* relied on Treasury Regulation § 1.1503-2(c)(12) and found that "successor in interest" requires a substantial transfer of assets or stock so that the acquiring corporation succeeds to the tax attributes of the acquired corporation. "Successor" is a general term, encompassing a broader set of transactions and resulting entities. Because only "successors in interest" are liable

the relationships defined in section 9701(c)(2)(A)(i-iii) is to be determined as of July 20, 1992, 106 days prior to enactment on October 24, 1992, unless the signatory operator is then no longer in business. In that event the determination is to be made as of the time just before the operator ceased to be in business. § 9701(c)(2)(B).

As a result of these related person provisions, the statute is explicit that a successor in interest of an entity meeting the definition of related person on July 20, 1992 is itself also a related person. § 9701(c)(2)(A). Thus, post-Act successors in interest of related persons have liability under the Act. At the same time, retroactive liability of successors in interest to related persons can arise in only limited circumstances. First, because the Act states that related person status is generally to be determined as of July 20, 1992, entities that become successors in interest to related persons (as determined on July 20, 1992) prior to the date of enactment (October 29, 1992), are in fact related persons themselves. Second, the same section also provides that if a signatory operator is no longer in business on July 20, 1992, related person status is to be determined at the time just before that operator ceased to exist. In that case, those who became successors in interest to related persons after the date the signatory operator went out of existence are also "related persons" under the Act, even if the succession occurred prior to the Act. Other than these two instances, the Act imposes no retroactive liability on successors in interest to related persons, because there can be

under section 9701(c)(2)(A), Bellaire assumes that the Commissioner used "successor" imprecisely when he meant "successor in interest." Whichever term is used, as explained below, Bellaire is a successor in interest to a signatory operator, not a related person, and the Act excludes it from liability.

no successor in interest to a related person before the related persons are identified.[7]

The Government claims that the language of the Act is actually ambiguous and that various extrinsic indications of legislative intent mandate retroactive liability for Respondents. It argues that the definition of "related person" includes successors in interest to signatory operators because each of the three statutory categories of related persons is defined in terms of entities related in certain ways to a signatory operator. U.S. Br. at 24. This argument does not, however, succeed in creating ambiguity sufficient to justify a search for meaning outside the text of the statute. As the Fourth Circuit pointed out, the suggested interpretation necessitates accepting the conclusion that a signatory operator is a related person to itself, a proposition that is difficult to grasp, let alone to accept as true. Pet. App. 25a, (citing *R.G. Johnson*, 172 F.3d at 894).

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[7] Even the Commissioner agrees that Congress intended that, in cases of pre-Coal Act succession where the seller or a related person remains in business for purposes of the Coal Act, liability to the Combined Fund should rest with the seller signatory operator or its related persons, and not with any successor in interest, thus avoiding retroactive imposition of liability on successors in interest in that circumstance. In *Eastern Enterprises v. Chater*, 110 F.3d 150, 154 (1st Cir. 1997), *rev'd on other grounds sub nom., Apfel v. Eastern Enterprises*, 524 U.S. 498 (1998), the Commissioner successfully resisted the argument of a pre-Act seller of coal assets that the successor company, rather than the original signatory operator, should bear the Coal Act liability. In upholding the Commissioner's position, the First Circuit noted the Act's express provisions assigning responsibility to the signatory operator, and rejected the argument that "Congress overlooked the possibility of assignment to successors" in interest of such an operator. The court reasoned that Congress is generally presumed to act "intentionally and purposely" when it "includes particular language in one section of a statute but omits it in another section of the same Act." 110 F.3d at 155 (quoting *Brown v. Gardner*, 513 U.S. 115, 120 (1994)).

Nor is any ambiguity concerning the meaning of the statute created by the argument offered by the Combined Fund, Br. at 22, that the statutory definition of "signatory operator" should itself be read to encompass successors in interest to signatory operators. This assertion is made by reference to general definitions of "person" and "company" which appear in sections one and five of Title 1 of the U.S. Code, and by linking those two definitions together in a manner that is fallacious on a number of grounds. Most obviously, these generic provisions of Title 1 are inapplicable because the Coal Act specifically addresses the liability of successors to a signatory operator with assigned liability to the Combined Fund under the Act, 26 U.S.C. § 9706(b)(2). That section provides that, following enactment of the Act, liability may or may not, by agreement, be transferred to the successor. The Coal Act thus expressly contradicts the assertion that responsibility to the Combined Fund is passed automatically from a signatory operator to its successor or successor in interest based on general definitions in Title 1.

Despite the lack of ambiguity, the Government argues for expanding the statutory definition of related person beyond that found in the statute based on broad notions of the purpose of the Coal Act. The question thus presented is whether the Coal Act should be construed to impose retroactive liability on successors in interest to signatory operators, even though its unambiguous language does not do so.

II. This Court's Cases Dictate That Unambiguous Statutory Language Must Be Applied As Written Unless The Result Would Be Absurd Or Demonstrably At Odds With The Intentions Of The Drafters

It is clear from this Court's decisions that where statutory language is unambiguous, it should be applied in accordance with its terms except in rare circumstances. What is less clear is the precise nature of the unusual circumstances that justify

a court's amendment of the particular words selected by Congress.

Most commonly, this Court has stated the rule that the plain and unambiguous language of a statute must be followed unless the literal construction is "so absurd or illogical that Congress could not have intended it." *E.g., Conroy v. Aniskoff*, 507 U.S. 511, 516 (1993). This Court has articulated the level of absurdity required to justify departure from the letter of the law as that which is "so gross as to shock the general moral or common sense," *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930), or which leads to "wholly impracticable consequences." *Caminetti v. United States*, 242 U.S. 470, 490 (1917).

As nearly categorical as this language at first sounds, it in fact fails to define the range of considerations by which the absurdity or illogic of the textual result is to be assessed. A court might find a statute to be absurd or illogical because, when its separate provisions are viewed together, they are seen to be incongruous or inconsistent with each other. Alternatively, if a court is permitted to look beyond the statute itself, absurdity, illogic, or incongruity may be found where the statutory language in question is fully consistent with other provisions of the statute, on the ground that it is contrary to some notion of the statute's intent drawn from considerations extrinsic to the statute itself. Legislative history, in any number of forms, could lead a court to this conclusion. What requires clarification is when, if ever, in assessing absurdity that may justify negating the clear meaning of a statute's words, a court may consider these extrinsic factors beyond the language of the statute itself.

A second test regularly articulated by this Court for determining whether to depart from the unambiguous literal language of a statute requires the determination of whether "the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters."

United States v. Ron Pair Enter. Inc., 489 U.S. 235, 242 (1989) (quoting *Griffin v. Oceanic Contractors Inc.*, 458 U.S. 564, 571 (1982)). Where that is true, this Court has stated "those intentions must be controlling" over the statute's literal words. *Griffin*, 458 U.S. at 571. Once again, while this language also clearly contemplates that the literal language will govern except in "rare cases," *Ron Pair*, 489 U.S. at 242, the test is indeterminate in failing to define the sources to be relied upon in divining the "intentions of [the] drafters." If such intentions must be drawn from the language of the statute itself—perhaps from other sections, with which the language at issue is in conflict—then the literal language must govern except where other portions of the same enactment render the statute, as thus read, irrational or inconsistent. If, alternatively, the "intentions of [the] drafters" may be discerned from materials outside of the statute itself, then the way is open for a statute's unambiguous words to be trumped by legislative reports and by extrinsic arguments of sponsors and others.

In one case, this Court injected additional uncertainty into this inquiry by suggesting that a court should look beyond the plain meaning of an unambiguous statute where the result "seems inconsistent" with the intent of Congress. *See Public Citizen v. United States Dep't of Justice*, 491 U.S. 440, 455 (1989). This directive suffers not only from the uncertainty discussed above, but also from a lack of clarity as to the degree or character of the perceived inconsistency. That same decision goes on to suggest that, perhaps, no actual inconsistency is required at all, by stating that a court is justified in looking beyond the literal text "when the result it apparently decrees is difficult to fathom." *Id.* The level of subjectivity imported by this standard into the process of reading statutes is substantial. Some courts may have an easier time "fathoming" certain results than other courts, and how much "difficulty" is enough to justify departing from the statutory language is left undefined.

Even more severe problems inhere in other articulations by this Court. In *Church of the Holy Trinity v. United States*, 143 U.S. 457, 459 (1892), the Court found it proper to rely on the "spirit" of a statute rather than the plain meaning of its text, where "the whole legislation or . . . the circumstances surrounding its enactment . . . makes it unreasonable to believe that the legislator intended" it to be read in accordance with its literal language. This language, which has been much discussed during the intervening century,[8] leaves open-ended not only the range of considerations properly to be considered in determining whether the literal language should be ignored, but also the breadth of resources to be referenced to identify the statute's "spirit" from which its meaning may be derived.

Accordingly, as more fully discussed below, there is a need for clarification of the circumstances under a court may override unambiguous statutory language.

III. The Principle Of Separation Of Powers Demands That Unambiguous Statutory Language Should Be Given Effect In Accordance With Its Terms, Unless So Read It Is Invalid Under Rational Basis Scrutiny

Amicus Bellaire submits that the ambiguity inherent in the standards articulated in this Court's opinions raises serious

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[8] *See* Carol Chomsky, *Unlocking the Mysteries of Holy Trinity: Spirit, Letter and History in Statutory Interpretation*, 100 Colum. L. Rev. 901 (2000) (collecting discussion of the case in Supreme Court decisions, articles by members of the Court and at oral argument); Adrian Vermeule, *Legislative History and the Limits of Judicial Competence: The Untold Story of Holy Trinity Church*, 50 Stan. L. Rev. 1833 (1998) (asserting that the Court's selective reading of legislative history in *Holy Trinity* led it to an incorrect conclusion about Congress' intent in passing the law at issue).

Justice Kennedy's concurrence in *Public Citizen* criticizes *Holy Trinity*'s "unhappy genesis" and "unwelcome potential," in allowing "judges to substitute their personal predelictions for the will of the Congress." *Public Citizen*, 491 U.S. at 473-74 (Kennedy, J., concurring).

problems of separation of powers in cases like the present one, where legislation enacted by Congress is entirely unambiguous on its face.

> While "[i]t is emphatically the province and duty of the judicial department to say what the law is," *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60 (1803), it is equally—and emphatically—the exclusive province of the Congress not only to formulate legislative policies and mandate programs and projects, but also to establish their relative priority for the Nation. Once Congress, exercising its delegated powers, has decided the order of priorities in a given area, it is for the Executive to administer the laws and for the courts to enforce them when enforcement is sought.

Tennessee Valley Auth. v. Hill, 437 U.S. 153, 194 (1978). As Justice Kennedy noted, concurring in *Public Citizen*, the absurdity exception to the application of a statute's plain meaning "remains a legitimate tool of the Judiciary . . . only so long as the Court acts with self-discipline by limiting the exception to situations where . . . it is quite impossible that Congress could have intended the result." 491 U.S. at 470-71. Otherwise, it amounts to an encroachment on one of the "central prerogatives" of the legislature—to enact legislation. *See Loving v. United States*, 517 U.S. 748, 757 (1996).

Without question, the case before the Court, in which legislative language can be said to be utterly clear and unambiguous on its face, is not the most common situation. In the more usual case, where the literal meaning is debatable, various principles of statutory interpretation are applied in order to discern the meaning of the language used. In the case of ambiguous statutory language, there is room for disagreement about the reliance properly to be placed on various forms of legislative history, and even concerning the propriety of considering factors separate and apart from both

the legislation itself and its circumstances of enactment.[9] There, because there is doubt about the meaning of the words enacted, at least it cannot be said that the court is simply invalidating the language chosen by Congress and substituting its own.

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[9] This Court has relied on all of the following sources in determining the meaning of legislation: committee reports; sponsor statements; rejected proposals; floor and hearing colloquy; nonlegislative drafters and sponsors; and legislative silence and subsequent history. *See* William N. Eskridge, *The New Textualism*, 37 UCLA L. Rev. 621, 636-40 (1990). *Compare Garcia v. United States*, 469 U.S. 70, 76 (1984) (the "authoritative source" of Congressional intent is found in the Committee Reports on the bill; eschewing reliance on statements of individual members); *with Brock v. Pierce County*, 476 U.S. 253, 263 (1986) (statements by individual legislators provide evidence of Congress' intent when they are consistent with the statutory language and other legislative history) (citation omitted); *and Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 744-45 n.11 (1989) (relying on report of the "Joint Committee of the American Book Publishers Council and the American Textbook Publishers Institute" in construing the Copyright Act); *with American Trucking Ass'n Inc. v. Atchison, Topeka and Santa Fe Ry.*, 387 U.S. 397, 417-18 (1967) (refusing to consider administrative agency advocacy in support of legislation as part of legislative history).

The Court has held both that reliance on subsequent legislative history is "dangerous" and that it is "entitled to great weight." *Compare, Solid Waste Agency of N. Cook County v. United States Army Corps of Eng'rs*, 531 U.S. 159, 170 (2000) ("subsequent history is less illuminating than the contemporaneous evidence") (internal citation omitted); *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 355 (1998) ("the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one") (internal citation omitted); *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 77 n.6 (1994) ("the views of one Congress as to the meaning of an Act passed by an earlier Congress are not ordinarily of great weight . . . and the views of the committee of one House of another Congress are of even less weight") *with Loving v. United States*, 517 U.S. at 770 ("[s]ubsequent legislation declaring the intent of an earlier statute is entitled to great weight in statutory construction") (internal citation omitted); *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 380-81 (1969).

Such judicial legislation is precisely what occurs when a statute's meaning is free from doubt, but a court nevertheless declines to apply it as written, instead assigning to it a different meaning because the court perceives that extrinsic considerations suggest a contrary intent. Separation of powers is offended not once but twice in such cases—first, by failing to enforce the enactment as indisputably written, and again, by giving force to an enactment that the legislature never adopted.

To avoid this result, *amicus* Bellaire urges the Court to adopt a rule of construction applicable only in a case such as this one, where the meaning of the literal language is unmistakable. Because the failure to follow such language amounts to not only its invalidation, but also to the substitution of an alternative enactment, Bellaire suggests that the unambiguous literal language should be followed, except in those circumstances where enforcement of the words as written would be unconstitutional.

This approach makes directly relevant this Court's numerous decisions in cases where statutory classifications are challenged on the basis that they offend the Equal Protection or Due Process Clauses. Under those cases, statutory language is enforced as written, and the constitutional challenge is rejected, regardless of Congress' actual intent, if there is any *conceivable* basis on which it can be said to be rational.

"In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993). *Accord McGowan v. Maryland*, 366 U.S. 420, 425-26 (1961) ("A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."). It is enough that the Court "be able to perceive a basis upon which the Congress might resolve the conflict as

it did." *Katzenbach v. Morgan*, 384 U.S. 641, 653 (1966). *Accord Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992) (requiring only some "plausible" policy reason to support a statutory categorization).

Likewise, where legislation is challenged under the Due Process Clause, a court's authority does not reach the question "whether the Congressional judgment expressed . . . is sound or equitable, or whether it comports well or ill with the purposes [of] the act. . . . [T]he Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification." *Flemming v. Nestor*, 363 U.S. 603, 611 (1960). This Court thus seeks explanations for legislative actions which meet only a minimal level of rationality. For example, in *Ferguson v. Skrupa*, 372 U.S. 726, 731 (1963), the Court upheld a state law criminalizing certain conduct, stating that "we refuse to sit as a 'superlegislature to weigh the wisdom of legislation.'" (internal citation omitted).

A statute imposing obligations retroactively faces heightened scrutiny under a due process challenge because its obligations are based on conduct which occurred in the past, over which the party adversely affected has no continuing control. Because "retrospective laws are, indeed, generally unjust," 2 J. Story, *Commentaries on the Constitution* § 1398 (5th ed. 1891), this Court has held that such enactments should be subjected to somewhat closer scrutiny. Such retroactive legislation, however, is sometimes upheld against constitutional challenges. In *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1975), for example, the Court upheld the retrospective imposition of liability for black lung benefits upon former employers, on the ground that it was justified as a "rational measure to spread the costs of the employees' disabilities to those who have profited from the fruits of their labor." *Id.* at 18. "It is enough to say that the Act approaches the problem of cost spreading rationally; whether a broader

cost-spreading scheme would have been wiser or more practical under the circumstances is not a question of constitutional dimension." *Id.* at 19. *Accord Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 729 (1984).

These cases, and others like them, make clear that, absent strict scrutiny triggered by a suspect classification or fundamental interest, a statute may not be invalidated simply because it fails to implement the perceived intentions ascribed to the drafters in a tidy and estimable manner. The Court has further made clear that a "legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *Beach Communications*, 508 U.S. at 315. It is enough that a conceivable rationale is "arguable" to "immuniz[e]" the Congressional choice from constitutional challenge. *Id.* at 320.

No lesser standard should apply where the issue is not only the invalidation, but the rewriting of a statute's unambiguous words. Thus courts should do so only where the constitutional test is met and not on the basis that the clear words fail to neatly advance a supposed purpose derived from evidence extrinsic to the statute.

IV. The Coal Act's Express Provisions Imposing No Retroactive Liability On Pre-Act Successors In Interest To Signatory Operators Should Be Applied As Written, Even Though The Act Allows Limited Retroactive Liability Of Successors In Interest Of Related Persons

The Coal Act is a highly complex and intricate set of provisions which, as the Court's opinion in *Eastern Enterprises v. Apfel* details, was the product of a long history of labor unrest in a declining industry, combined with a legislative determination to identify funding sources to secure lifetime health benefits to miners whose former employers

were not obligated or not able to provide them. 524 U.S. 498, 504-514 (1998). It accomplishes this objective by placing on the shoulders of selected current and former coal operators and their related persons responsibility for the future health benefits of retired mine workers and their dependents. In most instances, the retired miners worked for the entity charged with financial responsibility for some period of time. In *Eastern Enterprises*, the Court recognized that the Act, viewed as a whole, is fundamentally retroactive in character. *Id.* at 534. Ultimately, for that and other reasons, the Court found an absence of rationality within the Act to be so profound, as it relates to the "third tier" of liability, as to invalidate that provision on constitutional grounds. *Id.* at 537-38 (opinion of Justice O'Connor) (the Act "singles out certain employers to bear a burden that is substantial in amount, based on . . . conduct far in the past, and unrelated to any commitment that the employers made."); *Id.* at 548-49 (Kennedy, J., concurring) (noting the capacity of retroactive laws to "change the legal consequences of transactions long closed . . . thus destroy[ing] the reasonable certainty and security which are the very objects of property ownership").

This case presents no question whatsoever relating to prospective liability arising from successorship—that is, from assuming the status of a successor after the enactment of the Act. The statutory responsibility of such entities is clear and is not disputed here.[10] At issue in this case is only whether

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[10] The Act unambiguously provides, as to "a person becom[ing] a successor of an assigned operator after the enactment date," that it may, but need not, contractually undertake primary responsibility for liabilities under the Act. If it does so, the original signatory operator will remain liable as a guarantor. § 9706(b)(2). The "related persons" provision applies only to acts of succession after July 20, 1992 and states that all such successors in interest are themselves related parties. § 9701(c)(2).

Whatever the reason for this distinction in the imposition of prospective liability of successors in interest to signatory operators and related persons,

retroactive liability should be imposed upon entities, like Respondents and *amicus* Bellaire, who became successors in interest to signatory operators prior to adoption of the Act.

Eastern's invalidation of the Act's most remote imposition of retroactive liability on a former employer makes emphatically clear that the Act's *failure* to impose such retroactive liability upon successors in interest to signatory operators would survive any constitutional challenge. Congress may well have considered such pre-Coal Act buyers from signatory operators to be too remote in terms of time and lack of any employment relationship to justify the imposition of liability. Whatever the reason, the disfavored character of retrospective liability makes it all but unthinkable for this Court to infer such retroactive liability out of thin air based on a concern for statutory symmetry.

The Government argues for recognition of just such implied retroactive liability, based in part on the Coal Commission Report and several statements put in the record by individual legislators. It contends that Congress meant to cast a broad net of liability over various corporate entities related to the signatory operator, and specifically that it intended to reach pre-Act successors in interest to the signatory operator. U.S. Br. at 26-28. Most emphatically, it argues, as the D.C. Circuit found and as the dissent below argued, that the literal language of the Act is at odds with:

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there can be no doubt that it would withstand constitutional challenge. A concern to facilitate the sale of coal companies, as suggested by the court below, Pet. App. 32a-33a, is one clearly rational explanation. But given the prospective character of the legislation, it is unlikely that any such explanation is even necessary. Congress "may take one step at a time," and "may select one phase of one field and apply a remedy there, neglecting others." *Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955). Congress need not select the most effective or efficient approach to any particular problem. A court's ability to discern a better alternative does not permit it to legislate in Congress' place.

> Congress's stated purposes of ensuring that each Combined Benefit Fund beneficiary's health-care costs is borne (if possible) by the person with the most direct responsibility for the beneficiary, and not by other signatory operators that had no connection with the beneficiary, or by the public fisc.

U.S. Br. at 28; 172 F.3d at 895; Pet. App.39a-40a

Amicus Bellaire submits that, for two reasons, this Court should reject the argument of the United States and its *amicus* that the statute's language must be modified to accord with their view of congressional intent as derived from evidence extrinsic to the statute.

First, this form of argument is fundamentally irrelevant in any discussion of constitutionality under rational basis review and should be irrelevant as well to the interpretation of language that is entirely clear and unambiguous on its face. The supposed intentions of the drafters, as reflected in floor statements, reports, or other advocacy, should have no bearing on whether unmistakable legislative intent, found in the plain language of the Act, should be given effect. Only where the statute makes no sense—because it is self-contradictory or because no set of facts or objectives can be conceived of under which it is rational—is a court justified in departing from the explicit provisions adopted by Congress.

Second, even if the statements of alleged intent are considered, neither they nor the supposed lack of symmetry in the statute as written is remotely adequate to justify reading into the statute a broad provision imposing retroactive liability on pre-Act successors in interest to signatory operators. The general statement of intent to reach those with the "most direct responsibility" for the retiree hardly supports imposition of liability on successors in interest who had no notice they were undertaking such responsibility. More generally, this Court has made clear that statutes imposing retroactive liability are

to be read narrowly and scrutinized carefully. Petitioner and its *amicus* cite no case where this Court has inferred the existence of such legislative intent to impose retroactive liability, based on extra-statutory statements of intent, or in the absence of statutory language compelling that conclusion. Certainly it should not do so here.

This conclusion is not altered by the fact that the Act provides for limited retroactive liability of successors in interest of related persons, though not those of signatory operators. Retroactive liability for successors in interest to related persons arises only where 1) the related persons transfer of ownership or assets occurs between July 20, 1992 (presumptive date for determining related person status) and October 24, 1992 (date of enactment), or 2) if the signatory operator was out of business before July 20, 1992, between that date and October 24, 1992. Indeed, this Court's decision in *Eastern Enterprises*, invalidating the Act's most remote retroactive imposition of liability upon a retiree's former employer, raises serious questions about the constitutionality of retroactive liability of successors in interest to related persons with whom the retired miner never had an employment relationship of any sort.[11]

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[11] Indeed, such pre-Act successors in interest of related persons are two steps removed from any employment relationship with the retiree, and had no basis on which to foresee that the acquisition might result in potentially mammoth liabilities. In *Eastern Enterprises v. Apfel*, this Court recognized that "[r]etroactivity is generally disfavored in the law." 524 U.S. at 532. The four members of the Court who concluded that the Commissioner's assignment of retired miners to Eastern Enterprises was an unconstitutional taking, found that "Eastern cannot be forced to bear the expense of lifetime health benefits for miners based on its activities decades before those benefits were promised." *Id.* at 537. Considering the three factors relied upon to determine whether legislation amounts to a regulatory taking, the plurality found that the Act had substantial economic impact, it interfered with Eastern's reasonable investment-backed

But the validity *vel non* of the statute's retroactive provisions concerning successors in interest to related persons cannot alter the fact that it does not impose retroactive liability on successors in interest to signatory operators. And given this Court's strongly expressed reservations about retroactive legislation that imposes obligations based on conduct undertaken before the law was enacted, it would be ironic indeed if this Court, based on a perceived lack of legislative symmetry, were to read into the law a retroactive provision that Congress very clearly has not enacted.

It may be that legislators were motivated by a desire to cast the net of liability widely, and to thus expand available sources

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expectations and the nature of governmental action was unusual in that it singled out employers to bear a substantial burden based on past conduct that was unrelated to any commitment made or injury caused. *Id.* at 529-37. Justice Kennedy concurred in the plurality's conclusion that Congress exceeded its constitutional bounds when it imposed "liability for events which occurred 35 years ago" in the Coal Act. *Id.* at 549. Although relying on due process instead of takings theory, Justice Kennedy also focused on the Court's general distrust of retroactive legislation. "[D]ue process protection for property must be understood to incorporate our settled tradition against retroactive laws of great severity." *Id.* at 549. Justice Kennedy agreed that application of the Coal Act to Eastern represented one of the rare cases where Congress overstepped its otherwise broad constitutional bounds in the area of economic legislation.

Such reasoning raises a serious question about the constitutionality of imposing retroactive liability on successors in interest to related persons. Assignment of any number of miners will have a significant economic impact on the successor. It will interfere with reasonable, investment backed expectations because at the time the successor in interest made its purchase the Act was not in existence and future liability was completely unknown. Finally, the government's conduct in such a case is exactly that which this Court found objectionable in *Eastern Enterprises*: imposition of retroactive liability on parties who took no action to incur or assume liability to pay for benefits—indeed, who had no antecedent employment relationship at all with the beneficiary. Nonetheless, whether or not such liability is constitutional against a takings or due process challenge is a question for another day.

of funds to those with some historical connection—albeit remote—to the original employer, as they adopted this broadly retroactive legislation. However, there can be no doubt that Congress refrained from imposing one additional layer of retroactive liability—upon those who became successors in interest to signatory operators prior to the Act. That act of prudence obviously must be given effect by the Commissioner[12] and this Court, regardless of the other forms

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[12] Petitioner argues that the Commissioner's assignment is entitled to deference under *Chevron* and thus must be upheld as a reasonable exercise of authority to administer the Act. U.S. Br. at 44-45, n.24. *Chevron* deference is improper for a number of reasons. First, *Chevron* applies only where an agency is resolving a particular statutory ambiguity. *Chevron U.S.A., Inc. v. Nat'l Resources Defense Council, Inc.*, 467 U.S. 837, 845-46 (1984). Here, the statutory language is unambiguous. Second, even if ambiguity existed, courts apply *Chevron* deference only to agency decisions where the agency acts pursuant to delegated authority "to make rules carrying the force of law," as when it engages in adjudication or notice-and-comment rulemaking. *United States v. Mead*, 121 S. Ct. 2164, 2171 (2001).

Congress delegated neither legislative authority nor adjudicatory power to the Commissioner. Instead, the Coal Act imposes on the Commissioner the administrative tasks of identifying miners, signatory operators and related persons, and making assignments pursuant to Congress' specifications. Similarly, the Act's provisions allowing reconsideration of assignments, *see* § 9706(f), are insufficient to find that Congress granted authority to engage in adjudication. The Commissioner need only conduct a review of the assignment "if the Commissioner finds the operator provided evidence with the request constituting a prima facie case of error." § 9706(f)(2). This discretionary review is not equivalent to the rigorous procedures required for agency adjudication. The Commissioner's actions pursuant to the Act do not warrant *Chevron* deference.

Where *Chevron* deference is inapplicable, courts need only appreciate that agencies may possess "specialized experience" meriting deference. *Skidmore v. Swift & Co.*, 323 U.S. 134, 139 (1944). The Commissioner's assignments are not entitled to even this less deferential form of review because the assignment of retired miners to statutorily enumerated entities

of retroactive liability that the Act did, in fact, impose.

CONCLUSION

The decision of the Fourth Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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requires no "specialized experience" or expertise. Moreover, the brief time period in which the Commissioner has been making assignments under section 9706 narrows the "body of experience" that might make deference to an agency's "informed judgment" appropriate. *Id.* at 140.

In sum, the Commissioner's decision to ignore the express language of the Coal Act excluding successors in interest to signatory operators from retroactive liability is not entitled to any form of deference.

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